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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

VINCENT P., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	B155162 (Super. Ct. No. CK41719)

ORIGINAL PROCEEDINGS in mandate. Donna Groman, Commissioner. Writ denied.

Vincent P., in pro. per., for Petitioner.

No appearance for Respondent.

Lloyd W. Pellman, County Counsel, and Jerry M. Custis, Deputy County Counsel, for Real Party in Interest.

INTRODUCTION

Vincent P. (Father), father of the dependent children Shanelle P., Swae-Sean P., and Shaquera P. (the children), petitions (Welf. and Inst. Code, § 366.26, subd. (*l*))[1] for a writ to set aside the order of the juvenile court, made at a section 366.22 hearing, setting a section 366.26 hearing for April 3, 2002, to develop a permanent plan for the children.

Father, who is representing himself, raises numerous contentions. Many of these are not properly raised now, because they complain about proceedings far in the past; the time for seeking appellate review of those issues has passed. As to the order of the juvenile court at the section 366.22 hearing under review now, we hold the record supports the court's findings. Accordingly, we deny Father's petition for a writ.

BACKGROUND

The children came to the attention of the Department of Children and Family Services (the Department) in March 2000. On March 31, 2000, the Department's petition under section 300 was amended and sustained as amended. The court found that Father physically abused Swae-Sean, then age 7, by striking him repeatedly with an extension cord, and that on numerous prior occasions Father physically abused Swae-Sean, Shanelle, then age 10, and Shaquera, then age 4, by hitting them with a belt. The court removed the children from Father's custody for suitable placement, ordered the Department to provide family reunification

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[1] All further statutory references are to the Welfare and Institutions Code.

services, ordered Father to attend parenting and anger management, and set September 29, 2000, for a six-month review under section 366.21, subdivision (e).

The report prepared for the six-month review, and the accompanying letter from Inglewood Medical & Mental Health Services, stated that Father had attended 11 counseling sessions between March and June of 2000 but then stopped. The counselor's letter stated that before Father quit, he had been an active participant and had made significant progress. The social worker reported that Father told her "he was not going to deal with the anger management anymore. He stated that the counselor had said to him that if he did not do what was said in the petition then why is he here. [H]e thought about that and it made sense so he stopped going." The report recommended that Father be ordered to begin anger management with a licensed therapist approved by the Department and to discuss the matters of this case with the therapist. The minute order for the six-month review hearing states that all prior orders not in conflict shall remain in effect, and that Father had "PARTIALLY" complied with the case plan. The court set March 30, 2001, for the 12-month review under section 266.21, subdivision (f).

The report prepared for the 12-month review stated the social worker had discussed on many occasions the need for Father to attend *individual* therapy, but he was reluctant to do so. He had enrolled in November 2000 in *group* anger management classes at San Martin Counseling Center, attending 17 classes with active participation, and had completed a parenting education course. The report stated that although further reunification services were appropriate because Father had made "some" efforts to follow the case plan, "[h]e has not attended individual therapy which he agreed to do [in the court-ordered case plan]. The individual counseling was ordered to specifically address anger management." The minute order for the 12-month review hearing provided that family reunification services be continued. It states that all prior orders not in conflict shall remain in effect and

that Father was in "PARTIAL COMPLIANCE" with the case plan. The court set July 31, 2001, for a hearing under section 366.22.

The report prepared for July 31, 2001, stated that the social worker had on many occasions attempted to persuade Father to attend individual counseling, but he refused. The report recommended that because Father had not followed through with individual counseling, the court should terminate reunification services and set a hearing to develop a permanent plan. On July 31, 2001, the court continued the hearing to August 28, 2001, for a supplemental report concerning progress in counseling. The supplemental report for August 28, 2001, stated that Father had still not resumed individual counseling. He stated he liked group counseling better. He did not like anyone "getting into his mind." He was continuing to attend group counseling sessions at San Martin center. A letter from the San Martin center stated Father had attended 33 sessions as of August 9, 2001, and continued "on the path to growth toward Anger Management." The social worker recommended that family services be terminated. She opined, "[Father] has not changed his distorted perceptions or angry behaviors, and further has not complied with court ordered programs which were referred to facilitate insight and change. CSW spoke to him at length, and on numerous occasions, explaining the benefits of individual therapy. He refused to cooperate or comply, and relied instead on his insistence that the system was to blame for his problems, and his methods of parenting were right."

The hearing scheduled for August 28, 2001, was continued to October 23, 2001. An updated letter from San Martin center stated Father had completed 40 sessions as of October 22; his attendance was consistent and his level of participation high. It opined, "[Father] has learned the tools of anger management and has been using the tools in his daily living according to the statements he made in the group meetings." The hearing commenced on October 23, 2001, but was

continued until December 5, 2001. The court desired a further supplemental report on Father's progress in group counseling and whether the group counseling at San Martin center was sufficient to meet the requirements of the court orders.

The further supplemental report for December 5, 2001, stated that Father had just begun, on November 21, 2001, individual counseling with therapist Alonzo. As he had only attended two sessions so far, "[a]s of this date there has been no progress to report, other than [Father] is cooperative." Stating that like Alonzo, she is also a registered marriage, family therapist intern, the social worker stated she discussed with Alonzo "the importance of [Father's] processing his feelings and gaining insight into the underlying causes of his anger, including the understanding of emotions that may trigger angry feelings. The fact that [Father] has learned behavioral methods of dealing with his anger, but has not connected and processed his feelings is precisely why he needs therapeutic as well as behavioral interventions and treatment."

Responding to the court's inquiry whether the group counseling at San Martin center satisfied the court's orders, the social worker learned from Mr. Uzoka, Father's facilitator at San Martin center, that there are no educational or credential requirements for becoming a facilitator, although San Martin was approved by the probation department to conduct anger management classes. Uzoka stated that in the beginning Father held the view that corporal punishment was justified, but through the sessions had learned a different way of disciplining children. In Uzoka's opinion Father accepted responsibility for whipping his children and understood it was inappropriate. The latest letter from Uzoka stated Father had completed 45 sessions and shown "remarkable improvement in the way he presents himself in the class." The social worker recommended termination of services. She pointed out Father's 18-month lapse in attending individual therapy. She stated, "Individual Counseling was ordered by the court and [Father] agreed to

follow through. He did not follow through with individual counseling therefore there is no documentation to show that he has made progress in therapy. . . . [¶] . . . Therapy is not a course in behavior, it is a process of discovery that . . . provides a client with opportunity for transformative change. [Father] has not complied with court orders to effect this change; cognitive behavioral counseling does not address the whole problem, or provide an adequate solution for cessation of the commission of violent acts."

When the continued hearing under section 366.22 resumed on December 5, 2001, the court announced an agreement reached in chambers among the court and all counsel. Under the agreement, Father would no longer contest the section 366.22 proceeding. Father would be encouraged to continue his counseling and then petition to the court to modify (presumably under section 388) the orders the court made that day.

The court found: At the present time return of the children to the home of Father would create a substantial risk of detriment to their well being. Father has recently "resumed individual counseling[, a]nd additional time is necessary for him to complete the individual counseling. Therefore, continued placement of the children is necessary." "Since we're past the 18-month date, the court is terminating reunification services today. The court will set a .26 hearing. And that will be for April 3rd, 2002. . . . On that date, unless there is a successful petition to return the children to [Father's] care, the court will be obligated to make a permanent plan for the children, whether it's long-term foster care, legal guardianship or adoption."

DISCUSSION

Section 366.22

The hearing under review now was conducted under section 366.22. To place Father's various contentions into context, we summarize the law set forth explicitly in section 366.22 itself.

The hearing under section 366.22 shall be conducted no later than 18 months after the child was originally removed from parental custody. The court shall order the return of the child to the physical custody of the parent *unless* the court finds, by a preponderance of the evidence, that the return of the child to the parent would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The failure of the parent to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. If the child is not returned to the parent, the court shall specify the factual basis for its conclusion that return would be detrimental. If the child is not returned to the parent at this hearing, the court *shall* order that a hearing be held pursuant to section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. (§ 366.22, subd. (a).)

Thus, upon finding that the children could not be returned to Father's custody at the section 366.22 hearing, because there was still a substantial risk of detriment to the children, the court was compelled by section 366.22 to set a section 366.26 hearing to develop a permanent plan. The court did not have an option to continue reunification services, because the Legislature set 18 months as the absolute maximum period for providing family reunification services. (§ 361.5, subd. (a).) "The Legislature has recognized there must be a limitation on

the length of time a child has to wait for a parent to become adequate in order to prevent children from spending their lives in the uncertainty of foster care." (*Andrea L. v. Superior Court* (1998) 64 Cal.App.4th 1377, 1388.) The trial court nevertheless offered hope and encouragement to Father that if he successfully completed treatment, a petition under section 388 to modify the present order on the ground of changed circumstances might result in return of the children to his custody.

Applicable Contentions

Father contends the court did not comply with the requirement that it "specify the factual basis for its conclusion that return would be detrimental." (§ 366.22, subd. (a).) This contention is wrong because the court stated Father had recently resumed counseling and additional time was necessary for him to complete counseling. The statute specifies that failure of the parent to participate regularly and make substantive progress in court-ordered treatment programs is prima facie evidence that return would be detrimental. The argument repeatedly made by the Department below was that Father had quit court-ordered individual counseling, progress in which was needed in order to assure that return of the children to him would not be detrimental. By stating that the children could not be returned because Father had (only) recently resumed counseling and needed more time (to make substantive progress in therapy), the court adequately specified the factual basis for its ruling.

Father contends there is no substantial evidence that he failed to comply with court orders. He argues that he substantially complied by completing a parenting education course, attending *some* individual counseling before he quit, and attending numerous anger management group sessions at San Martin

counseling center. Other evidence, however, supported the trial court's conclusion that appellant failed to comply or make substantive progress. The reports of the social worker repeatedly explained the importance of individual counseling and therapy, as distinguished from attending group discussions about behavioral techniques. Under the statute it is not enough merely to participate in programs; substantive progress must also be demonstrated. (See *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1141, 1143.) The trial court evidently agreed with the social worker. Its conclusion is supported by substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763; *In re John V.* (1992) 5 Cal.App.4th 1201, 1212.)

Father contends the court erred because Father wanted the children to testify at the hearing. This was raised during the October 23, 2001 portion of the hearing. The court explained that the issue to be decided was Father's compliance with the case plan, and there was no reason to believe the children could offer testimony that was relevant to the issue being decided. Father fails to show that the absence of the children from the hearing affected the ultimate ruling.

Father notes that the report prepared for the hearing as originally scheduled for July 31, 2001, contains a statement that attempts were made to contact the children's mother at the home address. This was an obvious mistake, because the Department knew, since the commencement of the case, that the mother was deceased. But Father fails to show how this error affected the ultimate ruling.

Other Contentions

Father's other contentions go beyond the scope of challenging the trial court's orders at the section 366.22 hearing. These arguments relate to prior proceedings. The orders therein could have been appealed, or the arguments could

have been raised on Father's prior appeal. It is too late to raise them now. (*Wanda B. v. Superior Court* (1996) 41 Cal.App.4th 1391, 1395-1396; *Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 811.)

We take judicial notice that Father previously appealed from the jurisdictional and dispositional orders. We affirmed these orders in *In re Shanelle P.*, No. B140631, filed December 22, 2000. There is no merit to Father's suggestion that the copy of our opinion contained in the clerk's transcript should be disregarded because the justices' signatures do not appear on the last page thereof. This copy appears as an attachment to the social worker's report for the July 31, 2001 hearing, which noted that Father's appeal had been denied. It follows a certified copy of the remittitur with a statement by the clerk's office certifying that "the attached is a true and correct copy of the original order, opinion or decision entered in the above-entitled cause on December 22, 2000 and that this order, opinion or decision has now become final." A *copy* of an opinion, certified by the clerk as a true and correct copy of the decision, need not contain a copy of the signatures on the original.

Father contends that the March 31, 2000 adjudication hearing was conducted without a trial.[2] He further notes some of the original allegations (that the beating of Swae-Sean knocked his tooth out) were deleted by amendment. Any contentions of error at the adjudication hearing had to be raised on the prior appeal, and may not be considered or reconsidered now. Father also fails to realize that *without* the allegations that Swae-Sean suffered a broken tooth and bloody nose, the petition was sustained based on the beating of Swae-Sean with the electrical cord and prior instances of hitting all the children with a belt, and these findings

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[2] The minute order states the petition was sustained "per Malinda S." This suggests the petition was submitted on the social study as authorized by *In re Malinda S.* (1990) 51 Cal.3d 368.

were affirmed on appeal. Father reaches the wholly fallacious conclusion that if Father did not break Swae-Sean's tooth, he did not need to comply fully with court-ordered counseling.

Father contends that the court refused to listen to a schoolteacher who desired to present information to the court. The teacher's letter referred to a date of June 16, 2000, when she appeared at the courthouse hoping to present information. This was after the adjudication hearing of March 31, 2000. The issue before the court at that time appears to have involved replacing one relative with a different relative as caretaker of the children. Any error in that regard should have been raised by a timely challenge to the new placement order. Father fails to show this incident had any effect whatsoever on the ruling under review now.

DISPOSITION

The petition is denied.

NOT TO BE PUBLISHED

VOGEL (C.S.), P.J.

We concur:

EPSTEIN, J. HASTINGS, J.